General Counsel's Supplemental Report
January 1, 2006 – March 31, 2006

Public Employment Relations Commission

Robert E. Anderson
General Counsel

Don Horowitz
Deputy General Counsel

Commission Regulations

The Commission has proposed readoption (with minor amendments) of its scope-of-negotiations rules and mediation and arbitration rules. Copies of the proposals may be found on the Commission's website.

Appeals from Commission Decisions

A stay of a representation election was denied by Appellate Division Judge Rodriguez in *Hudson Cty. and United Workers of America, Local 322 and District 1199J, NUHHCE,* P.E.R.C. No. 2006-76, __ *NJPER* ___ (¶___ 2006), motion for leave to file an interlocutory appeal pending. The Commission had declined to decide an internal union dispute involving two factions of the United Workers of America, Local 322 arising after a consent election agreement was signed and had allowed the scheduled election to proceed. Judge Gallipoli, Assignment Judge of Hudson County, denied an earlier request for a stay, concluding that a trial court lacked jurisdiction to review the Commission's decision and interlocutory order.

Statutes

On January 12, 2006, Governor Codey approved A-4162. This new law supplements the New Jersey Employer-Employee Relations Act by adding this paragraph to the end of *N.J.S.A*. 34:13A-5.3:

> In interpreting the meaning and extent of a provision of a collective negotiation agreement providing for grievance arbitration, a court or agency shall be bound by a presumption in favor of

> arbitration. Doubts as to the scope of an arbitration clause shall be resolved in favor of requiring arbitration.

The statement accompanying the bill provides:

> This bill requires any court or agency, when interpreting the meaning and extent of a provision of a public employment collective negotiation agreement providing for grievance arbitration, to be bound by a legal presumption in favor of arbitration. The bill requires that any doubt as to the scope of an arbitration clause of the agreement be resolved in favor of requiring arbitration.

A new law (A-4161) requires the State to set prevailing federal wage rates for workers employed by building service contractors that provide cleaning, maintenance and security in buildings owned or leased by the State. The law applies to building service contracts entered into or renewed 60 or more days after its January 12, 2006 enactment.

Court Cases

Contractual Arbitrability

On April 4, an Appellate Division panel will hear oral argument in *Lenape Regional H.S. Dist. Bd. of Ed v. Lenape Dist. Support Staff Ass'n*, App. Div. Dkt. No. A-005095-04T1. The lower court restrained binding arbitration of a grievance asserting that a school board did not have just cause not to renew a custodian's employment contract. The trial court initially held that the grievance was contractually arbitrable, but reversed itself after *Camden Bd. of Ed. v. Alexander*, 181 *N.J.* 187 (2004) was decided. One of the issues to be argued is whether the new law concerning the presumption of contractual arbitrability applies to this dispute where the contract was negotiated before *Camden* but the new law was enacted after the grievance arose.

Duty of Fair Representation

In *Bullock v. Dressell*, 2006 *U.S. App. LEXIS* 1034 (3d Cir. 2006), the Third Circuit Court of Appeals affirmed a summary judgment for a union. The plaintiff had alleged that the union's business manager violated the Labor Management Reporting and Disclosure Act by blacklisting union "travellers" who had complained about an employer's late payments and benefit contributions and who had asked the union for a copy of the collective bargaining agreement. The Court held that the alleged blacklisting

did not constitute actionable "discipline" under the LMRDA since it was not punishment authorized by the union or carried out by the union in its official capacity. The Court, however, reversed the local court's ruling that the employee's duty of fair representation claim was barred by the NLRA's six-month statute of limitations. The Court held that the limitations period applies only to duty of fair representation claims that accompany breach of contract claims and not to disputes "entirely internal to the union." It remanded the case to the district court to determine the most analogous New Jersey statute of limitations.

In *Farber v. City of Paterson*, 2006 *U.S. App*. 5778 (3d Cir. 2006), the Third Circuit Court of Appeals held that a plaintiff may bring a court action alleging that a public sector majority representative has breached its duty of fair representation and that the statute of limitations for such a claim is the six-year period covering tort claims rather than the six-month period covering unfair practice claims. The Court recognized PERC's exclusive jurisdiction and the labor relations policies favoring a six-month period, but concluded that it is up to the Legislature rather than the Court to shorten the limitations period for a DFR claim.

The Court also dismissed a claim that the City of Paterson conspired to deprive an employee of her First Amendment rights by terminating her because of her political affiliation. The Court concluded that federal civil rights law does not provide a cause of action for individuals allegedly injured by conspiracies motivated by discriminatory animus directed toward their political affiliation.

Statute of Limitations

The Third Circuit Court of Appeals has affirmed the dismissal of two federal lawsuits filed by a court reporter formerly employed by the Administrative Office of the Courts against the Commission and multiple other defendants. *Yuhasz v. Poritz*, Dkt. No. 05-1660 (2/15/06), and *Yuhasz v. Leder*, Dkt. Nos. 05-1838 and 05-2872 (2/15/06). The allegations against the Commission were dismissed as time-barred, but the Court suggested that other reasons could have been given as well. The district court opinion in *Yuhasz v. Leder* is summarized in my annual report.

School Nurses

In *Ramsey Teachers Ass'n v. Ramsey Bd. of Ed.*, __ *N.J. Super*. ___, 2006 *N.J. Super. LEXIS* 2 (App. Div. 2006), the Appellate Division affirmed a decision of the State Board of Education holding that a 1999 law allowing a district to supplement the services of certified school nurses with non-certified nurses, provided that the non-certified nurse is assigned to the same building as a certified school nurse, did not require the presence of a certified nurse in a school building at all times. The New Jersey School Boards Association and the New Jersey Education Association participated as friends of the court.